

## **ADDENDUM NO. 2**

### **Request For Qualifications**

### **For Buckman Direct Diversion Project**

#### **Notice to Potential Respondents**

This Addendum No. 2 revises, clarifies, and becomes part of the Request For Qualifications issued and dated February 6, 2006, for the Buckman Direct Diversion Project (RFQ). Receipt of this Addendum No. 2 must be acknowledged in the Transmittal Letter for your Submittal.

The RFQ and addenda set out general concepts, issues, and current thoughts and intentions for implementation of the Project. The DB Contract will incorporate all terms and conditions of the final agreement between the BDD Board and the DB Contractor. The RFQ, addenda, or any part thereof, shall not be deemed to be a part of the DB Contract.

#### **Questions and Responses**

1. “We would like to know what form of contract the owner intends to use, whether it is the AGC, EJCDC, or other. Will the contract have supplemental conditions? Are you open to suggestions for contract use? Could we get a sample of the contract? Are you creating a new contract or starting with the standard DBIA contract? What will be the basis of contract form – DBIA, AGC, other?”

**RFQ Clarification: The current intent is to circulate the proposed draft of the DB Contract for review and comment by the short-listed DB Teams in late May. The comments submitted by the short-listed DB Teams will be addressed in the Step 2 Request For Proposals (which will include the Draft DB Contract) scheduled for issuance in late June. The basis of contract form has not been decided.**

2. “Can you be more specific regarding the consequential damages statement on Page 21 under the heading Security for Performance (bonds and/or letters of credit)? As I understand it, open ended consequential damages will be a part of the contract. However, there is some consideration to setting limits for the consequential damages. We will not sign an open ended contract for consequential damages and unless reasonable caps are set, we will elect to drop out of the procurement process for the Buckman Direct Diversion Project.”

**RFQ Clarification: It is intended that consequential damages will be waived as between the parties to the DB Contract. A cap on DB Contractor liability for nonperformance damages is also expected to be provided. Indemnification of third party claims, however, would not be affected by a waiver of consequential damages or by a cap on nonperformance damages.**

3. “How will time extensions be handled with the unknown archeological sites?”

**RFQ Clarification: The DB Contract will include a detailed state-approved process requiring the DB Contractor and the Owners’ Consultant to respond proactively to “unknown” archeological sites that may be discovered during the course of the DB work.**

**The intent of this process will be to avoid or minimize the need for time extensions in the event that “unknown” sites are discovered. The DB Contractor will be required to submit revised work plans and schedules to accommodate the necessary archeological data recovery work by the Owners’ Consultant. Depending on the scope of the recovery work and the impacts on DB Contractor work plans and schedules, a time extension may or may not be required. Adverse impacts on the critical path of the DB Contractor’s original schedule that was approved by the Owners may be afforded relief as uncontrollable circumstances.**

4. “Page 31, item #11 – The statement “....response to uncontrollable circumstances” can mean a myriad of things, catastrophic events such as earthquakes, continued severe drought, 100 year rain event and resulting floods, unusually heavy snow falls, special interest groups using themselves as barricades, the discovery of ancient sacred Indian burial grounds or contaminated or hazardous materials, claims to the land by some obscure group or tribe, etc. Could you please clarify what the intent is here?”

**RFQ Clarification: Item 11 of the Project Approach is requesting a general description of how the DB Contractor would respond (i.e., steps taken to mitigate impacts on schedule and costs) to the general occurrence of events or circumstances beyond its control (such as the ones described).**

5. “In establishing performance testing and warranty requirements, is it the intent to establish a corresponding raw water quality window within which the performance test is valid, and outside of which relief is provided?”

**RFQ Clarification: Yes.**

6. “If design criteria will be provided for some elements of the project, will we be able to similarly rely upon them in our design and for the performance guarantee?”

**RFQ Clarification: The Proposer will not be able to rely upon the minimum design criteria set forth in the RFP for the DB Contractor’s performance guarantee. The Proposer will be required to verify that such minimum design criteria are adequate for the Proposer to meet the performance guarantee. If the Proposer determines that any of the minimum design criteria set forth in the RFP is not an acceptable basis for its final design to meet the DB Contractor’s performance guarantee, then the Proposer must utilize more conservative design criteria for its design. In no event, however, may the Proposer utilize design criteria that are less conservative than the minimum design criteria set forth in the RFP.**

7. “Will there be an opportunity to comment on the draft contract prior to issuance of the RFP?”

**RFQ Clarification: Yes.**

8. “Will the draft contract be provided for review, and will responses to comments be provided, prior to a firm being asked to commit to submitting a proposal at shortlisting?”

**RFQ Clarification: Yes. A draft contract will be provided for review and responses to comments on the draft contract will be provided, but this will not occur before a firm is asked to commit to submit a Proposal.**

9. “What if a Proposer feels another treatment process will meet all the performance requirements established in the RFP, but at a lower capital or lifecycle cost? Will such an alternative proposal be considered, and if so, how?

**RFQ Clarification: No, an alternative proposal for another treatment process will not be considered. However, the RFP may identify areas within the required treatment process where alternative approaches may be allowed, but such approaches may not be less conservative than the minimum design requirements set forth in the RFP.**

10. “Can any additional information be provided as to what “high level” means – perhaps in terms of whether it will be written specifications, drawings (and if so, number, type and level of completion), design criteria, design calculations, etc?

**RFQ Clarification: The scope of work for the preliminary design to be prepared by the Owners’ Consultant and included in the RFP for the WTP has been added to the Procurement Library. Such scope of work describes the level of design development for the WTP as well as other facilities included in the Project.**

11. “Will the Record of Decision be issued on the EIS prior to the release of the final RFP?”

**RFQ Clarification: It is expected that the signed Record of Decision will be issued before release of the RFP.**

12. “The RFP indicates that cost will be 60% of the evaluation in the Step II selection. Will this be capital cost only, or capital and lifecycle costs, and if lifecycle costs are included in the evaluation, what will be the basis of the lifecycle evaluation?”

**RFQ Clarification: The current intent is that the cost criterion will be based on capital cost, but some operating costs may also be taken into account for a lifecycle evaluation.**

13. “The RFQ indicates (p.20) that detailed design documents for the project “... will be subject to review and comment by the Owners and the Owners’ Consultant... “What will be the purpose and intent of that review and comment?”

**RFQ Clarification: The purpose will be to determine if the Design Builder’s detailed design documents are in compliance with the requirements of the DB Contract.**

14. “The draft pilot testing report discusses the issue of compatibility of this source with existing water supplies. What is the intent for assignment of risk for any water quality compatibility

between this supply and existing supplies? Will it be assumed that if the BDD supply meets the performance requirements that are established in the RFP, that it will be compatible with existing supplies?

**RFQ Clarification: Yes, it will be assumed that if the DB Contractor's performance standards are met, then compatibility of supplies will be assumed.**

15. "How will you define a realistic schedule?"

**RFQ Clarification: The duration of December 15, 2006, to June 1, 2009, presented in the RFQ for completion of the work under the DB Contract (including performance testing and acceptance by the Owners) is considered realistic. As set forth in the RFQ, the Project Approach section of the Submittal must describe your approach for meeting this schedule. If your assessment is that such duration is not achievable or realistic, please discuss in the Project Approach section of your Submittal.**

16. "Is the Selection Committee the same for the RFQ and the RFP? Who will be on the Selection Committee for Step 1 and Step 2?"

**RFQ Clarification: The Selection Committee may or may not include the same individual members for Step 1 and Step 2. The individual members of the Step 1 Selection Committee will be appointed in late March.**

17. "Can we get a copy of the presentation you gave today?"

**RFQ Clarification: Yes. It has been added to the Procurement Library.**

18. "How heavily weighted will New Mexico experience be? How heavily weighted will Santa Fe experience be? Are there any specific advantages to being a New Mexico-based firm? Any definition of New Mexico-based firm?"

**RFQ Clarification: New Mexico and Santa Fe experience will not be specifically weighted. The Project Experience and Capabilities criterion for Step 1 has an overall weight of 30% and includes an evaluation of the degree of relevance of the experience demonstrated in the Submittal. New Mexico and Santa Fe experience will be taken into account in that the location of project experience is one aspect of relevance but not the predominant one.**

19. "The RFQ indicates all SOQs will be available for review when shortlist is announced (except for items listed as confidential). Is this correct? Why is this happening? Can we declare the whole SOQ confidential?"

**RFQ Revision: The first sentence under the heading Public Disclosure in Section 3.8 of the RFQ is deleted and replaced with: "The Step 1 Submittals will not be opened publicly, but may be open to public inspection at such time as the DB Contract is awarded, except to the extent that trade secrets and other information may be protected and kept confidential"**

**under applicable law and except as public disclosure may otherwise be required under applicable law.” The question of whether the whole SOQ or any portion can be declared confidential is a question of state law for the Respondent to determine.**

20. “Will the sign-in sheet be available?”

**RFQ Clarification: Yes. The sign-in sheet has been added to the Procurement Library.**

21. “Will the Step 1 evaluation carry over to Step 2?”

**RFQ Clarification: The DB Teams included on the short list will be generally treated as equally qualified going into the Step 2 proposal process. However, significant differences in qualifications will be taken into account in the Step 2 proposal evaluation.**

22. “Under Past Performance, page 31 states that we must “describe any state licensing violations...” We will address this as NM state licensing violations and not a 50 state requirement unless otherwise directed.”

**RFQ Clarification: The cited reference to state licensing violations does not refer only to the State of New Mexico. The RFQ requires the disclosure of state licensing violations in all of the 50 states of the United States.**

23. “Page 26, under Required Format, Appendix A is for Management and Control (if applicable). Please explain the desired intent of this Appendix.”

**RFQ Clarification: Appendix A to the Submittal would be required only if a new entity, such as a joint venture, will be created to act as the DB Contractor. Is such event, Appendix A must include a written agreement of the parties compromising the new entity. The agreement must set forth the principles for governance so that the powers of management and control of the entity can be understood.**

24. “Under Minimum Project Experience, the RFQ asks for the experience of Design, Construction and the DB Contractor. This appears to be a duplicate effort for the DB Contractor. As I understand it, the experience of the DB Contractor is a compilation of the designer and contractor. Please explain.”

**RFQ Clarification: The Minimum Project Experience requirements for the DB Contractor are not a compilation of the designer and contractor. The DB Contractor itself must meet the experience requirements set forth for the DB Contractor.**

25. **RFQ Revision: The first two sentences under the heading Contract Negotiations in Section 3.3 of the RFQ (page 17) are deleted and replaced with: “Upon completion of the RFP step, contract negotiations would be initiated with the top-ranked Proposer.”**

**26. RFQ Revision: On the RFQ title page and in the header on every page, replace “City of Santa Fe and Santa Fe County” with “Buckman Direct Diversion Board.”**

**27. RFQ Revision: In the second sentence under the heading 1.2 Project Proponents, replace “of these proponents” with “entity involved in the Project.”**

28. “SOQ font size is specified as 11 point minimum. Does this apply to graphics that might be included, such as Tables, or does it apply just to text?

**RFQ Clarification: The 11 point minimum font size called for in Section 4.4 refers to text. A different size may be used for tables and graphics.**

This addendum will be part of the RFQ. Non-receipt of this addendum by Respondent in no way relieves Respondent of any obligation of compliance with any terms and conditions stated in the addendum.

**[END ADDENDUM NO. 2]**